IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1437 of 2002
To
FIRST APPEAL No. 1442 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NEW INDIA ASSURANCE CO.LTD - Appellant(s)
Versus
THAKORE BABIBEN W/O RAMSANGJI KANAJI & 4 - Defendant(s)

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Appearance :

MR SANDIP C SHAH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 3, 5,
MR MEHUL SHARAD SHAH for Defendant(s) : 1 - 3.
None for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/08/2006

ORAL JUDGMENT

1. By way of these appeals, the appellants have challenged the judgement and award dated 06.10.2001 passed by the Motor Accident Claims Tribunal, Mehsana in MACP No. 802 , 804, 1536 to 1538 with 803 of 1990 whereby the Tribunal awarded compensation payable by the original opponents to the original claimants.

2. The original claimants had filed claim petitions seeking compensation in respect of the vehicular accident

which occurred on 17.05.90 while the claimants and deceased were travelling in matador bearing no. GQA 6799. Due to the rash and negligent driving of the driver, the matador turtled thereby killing some people and injuring other passengers. The claim petitions came to be filed by the injured and the legal heirs and representatives of the deceased under the said circumstances. The Tribunal after hearing the parties passed the aforesaid awards.

3. Learned advocate for the appellant has contended that the present appellant ought to have been held not liable to pay the compensation amount as there is a specific condition in the policy not to use the vehicle for hire or reward. He has further contended that the Tribunal failed to appreciate that the matador was registered as a goods vehicle and can only be used under Public Carriers Permit within meaning of M.V Act, 1939.

3.1 Learned advocate has placed reliance on various decisions of this Court and the Apex Court in order to substantiate his contentions. The decisions relied by him are in the cases of Vanaji Dhulaji v Shivabhai Kashibhai reported in AIR 1980 Gujarat 154, Mallawwa and others v Oriental Insurance Co. Ltd. and others reported in 1999 ACJ 1, Oriental Insurance Co. Ltd v Devireddy

Konda Reddy reported in 2003 SC 1009[2003(2) SCC 339] and New India Assurance Co. Ltd v Asharani reported in 2003(2) SCC 223.

4. Heard learned counsel for the parties. I have gone through the averments made in the appeal and documents placed on record including the award of the Tribunal. From the perusal of the award, it is clear that the present appellant had strongly contended before the Tribunal that the matador bearing no. GQA 6799 was a goods vehicle and under the terms and conditions of the policy it was to be used only under a public carrier permit and that the policy does not cover the risk for the use of the matador for the conveyance of passenger for hire or reward.

4.1 A perusal of the decisions relied on by the learned counsel for the appellant is relevant at this stage and the same is considered one by one. In the case of **Vanaji Dhulaji (supra),** this Court has held that vehicle not covered by permit to ply for hire or reward on date of contract of insurance used for that purpose in breach of specific condition in policy which excluded such use and the insurance company is not liable to satisfy award against insured in respect of third party risks.

4.2 In the case of **Mallawa and others(supra)** the Apex Court has held that the insurance company is not liable for death or injuries sustained by persons carried in a goods vehicle either along with their goods or after paying fare or gratuitously.

4.3 In the case of **Oriental Insurance Co. Ltd (supra)** the Apex Court has taken the view that the provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefore.

4.4 In the case of **New India Assurance Co. Ltd (supra),** keeping in view the provisions of the 1988 Act, the Apex Court has taken the same view as in Oriental Insurance Co. Ltd (supra) that as the provisions do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

5. As a result of hearing and perusal of records and in view of the decisions of this Court and the Apex Court, I am of the opinion that the contentions raised by the

appellant is required to be accepted. The fact that the vehicle in question was a goods vehicle cannot be disputed and therefore the appellant cannot be held liable to undertake third party risk in a case where the vehicle is used for a purpose other than the one for which the policy is covered. In that view of the matter, the awards of the Tribunal are required to be modified by not holding the present appellant liable for the compensation payable to the original claimants.

6. In the premises aforesaid, the appeals are allowed. The awards of the Tribunal are quashed and set aside qua liability of the insurance company-present appellant. The amount deposited by the insurance company shall be refunded. However, if the amount is withdrawn by the original claimants, the same shall not be recovered. It will be open for the insurance company to recover the same from the owner and if the amount is not paid to the claimants it will be open for the claimants to recover the same from the owner. The awards of the Tribunal are modified accordingly. No order as to costs.

(K.S. JHAVERI, J.)

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